

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 454 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BRAHMBHATT DIWALILBEN CHHABILDAS

Versus

SURAKSHA CO-OPERATIVE HOUSING SOCIETY LTD.

Appearance:

MR PM THAKKAR for Appellant

MR PK JANI for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 30/01/97

ORAL JUDGEMENT

1. This is an appeal under Order 43 Rule 1 CPC, wherein the appellant is the original plaintiff and the respondent is the original defendant.
2. The plaintiff had filed suit for a permanent injunction restraining the defendant from disturbing or interfering with the possession of the plaintiff in

respect of a plot situated at City Survey No. 767, site no.44 in the city of Visnagar. The plaintiff had also filed an application for interim injunction at ex.5, which the trial court heard and ultimately rejected. It is this rejection of the injunction application at ex.5 which is the subject matter of the present appeal.

3. As a result of the hearing and perusal of evidence, certain facts become obvious. Firstly, the plaintiff has not filed a suit for declaration of title and prayed for prohibitory injunction as a consequential relief. In fact, the plaintiff has sued only for prohibitory injunction restraining the defendant from disturbing or interfering with the possession of the plaintiff. This relief is claimed on an assertion that the plaintiff is in possession.

4. However, the finding of fact recorded by the trial court as regards actual and physical possession is not in favour of the plaintiff, and there is a specific and positive finding that the defendant is in possession of the disputed property. Even at this appellate stage, learned counsel for the appellant is unable to make and sustain any contrary assertion as to the actual holding of physical possession.

4.1 It is further obvious that the trial court, while rejecting application at ex.5, has not based the decision only on the finding of possession in favour of the defendant, but has also investigated the title of both the plaintiff and the defendant. As a result of this investigation, the trial court has come to conclusion, no doubt for the limited purpose of deciding the application ex.5, that the Sanad held by the plaintiff has been issued out of a mistake on the part of the authorities. The trial court has gone to the extent of saying that "this mistake may either be bonafide or malafide, and this mistake need not be investigated at this stage". Be that as it may, I am of the opinion that, it is not open to the trial court at least at an interim stage to casually brush aside a document of title issued by the competent authority namely; Sanad, by observing that it has been issued out of a mistake, either bonafide or malafide. No document of title can be brushed aside casually in such a manner, unless such a finding is a result of a total consideration of whatever evidentiary material the parties choose to place before the court, and the investigation of title, the legality and validity of the document of title etc., is the very subject matter of the suit. In other words, a document of title may be recognized by a court or rejected by a court, if such

title is the subject matter of dispute before the court. However, as observed hereinabove, the plaintiff has not sought declaration of title, and the reliance upon the Sanad was only for the purpose of showing the legitimacy of claim put forward in the plaint. Under the circumstances, it is not possible to approve of the impugned judgment and order, atleast on this count.

4.2 However, so far as the finding of fact as regards actual and physical possession in favour of the defendant is concerned, that cannot be lightly dispelled, and even at this stage, it appears that the defendant is in possession. Thus, the impugned order may otherwise be justified on the simple ground that the plaintiff would not be entitled to a prohibitory injunction restraining the defendant from interfering or obstructing the possession of the plaintiff, since the plaintiff is not in possession of the property.

5. In the premises aforesaid, it is not necessary to discuss in greater detail, the validity or otherwise of the impugned judgment and order. Suffice it to say that it is sustainable on the aforesaid simple finding of fact as to possession of the land in question.

6. At this stage, it may be noted that the plaintiff is not granted any interim injunction as prayed for in application at ex.5, simply on the ground that the defendant is found to be in possession. However, it may well be that, when the trial court finally decides the suit, looking to the entire evidence on record, the trial court may allow the suit. However, if in the meanwhile, the subject matter of dispute has been sold away, built upon or its nature and character substantially changed, that would be as good as non-suiting the plaintiff and/or rendering the entire suit infructuous. Thus, I am of the opinion, that it would be in the interest of justice, while refusing the plaintiff the injunction as prayed for, to simultaneously direct the defendant not to transfer, alienate, assign and/or to deal with the disputed land in any manner whatsoever (including making any construction thereupon and/or making any fundamental change in the nature and character of the land) during the pendency of the suit.

7. This appeal is therefore, dismissed with no order as to costs.

8. In view of the fact that the suit is an old one, the trial court is directed to dispose off the same as expeditiously as possible, and preferably before 30th

November, 1997.

Amp / -